UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25667
26 April 1993

ORIGINAL: ENGLISH

LETTER DATED 26 APRIL 1993 FROM THE CHARGE D'AFFAIRES A.I. OF THE PERMANENT MISSION OF NEW ZEALAND TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to refer to the statement of the Security Council adopted on 31 March 1993 (S/25493) concerning your report on "An agenda for peace" and the issue of the safety and security of United Nations forces and personnel. You will recall that in that statement the Security Council requested you to report as soon as possible on existing arrangements for the protection of United Nations forces and personnel, and the adequacy thereof, taking into account relevant multilateral instruments and status-of-forces agreements concluded between the United Nations and host countries, as well as comments you may receive from Member States, and to make such recommendations as you consider appropriate for enhancing the safety of United Nations forces and personnel.

I have the honour to enclose the comments of the New Zealand Government for consideration in connection with the above report.

I will also be providing the enclosed paper as New Zealand's observations and suggestions submitted in accordance with paragraph 60 of General Assembly resolution 47/71 entitled "Comprehensive review of the whole question of peace-keeping operations in all their aspects", for consideration by the Special Committee on Peace-keeping Operations at its current session.

I should be grateful if you would circulate this letter and its enclosure as a document of the Security Council.

(Signed) J. W. McKINNON
Chargé d'affaires a.i.

Annex

Security and safety of United Nations forces and personnel

Background

1. The Secretary-General, in his report entitled "An agenda for peace" (S/24111), indicated that there had been "an unconscionable increase in the number of fatalities amongst United Nations personnel engaged in peace-keeping". He identified a "pressing need to afford adequate protection to United Nations personnel" and called on the Security Council to "gravely consider what action should be taken towards those who put United Nations personnel in danger".

2. In its resolution 47/72, the General Assembly requested the Special Committee on Peace-keeping Operations to study measures to ensure the safety of peace-keeping and other United Nations personnel.

3. Responding to the Secretary-General's request, the Security Council took up the question of measures for the protection of United Nations personnel in March 1993. The Council, in a presidential statement on 31 March 1993 (S/25493):

(a) Indicated that attacks and other acts of violence, whether actual or threatened, including obstruction or detention of persons, against United Nations forces and personnel were wholly unacceptable;

(b) Demanded that States and other parties to various conflicts take all possible steps to ensure the protection of United Nations forces and personnel;

(c) Demanded that States act promptly and effectively to deter, prosecute and punish all those responsible for attacks and other acts of violence against United Nations forces and personnel;

(d) Recognized that particular difficulties and dangers arose where United Nations forces and personnel were deployed in situations where the State or States concerned were unable or unwilling to exercise jurisdiction in order to protect such forces;

(e) Indicated that attacks on United Nations forces and personnel might require the Council to take further measures to ensure the safety and security of United Nations forces and personnel;

(f) Requested the Secretary-General to report on measures for improving the protection of United Nations forces and personnel and invited Member States to contribute comments to the Secretary-General to assist in the preparation of his report.

Comments of the Government of New Zealand

4. The following comments by New Zealand are submitted pursuant to the invitation to assist the Secretary-General contained in document S/25493.

5. They are also circulated for the assistance of members of the Special Committee on Peace-keeping Operations to contribute to discussion of the Committee's mandate under General Assembly resolution 47/72.

Comments on existing arrangements for protection and safety

6. United Nations forces and personnel are normally deployed following the conclusion of a standard status-of-forces agreement between the United Nations and the State or States concerned. (The text of the model status-of-forces agreement is set out in document A/45/594.) These status-of-forces agreements draw on the 1946 Convention on the Privileges and Immunities of the United Nations. a/ The 1947 Convention on the Privileges and Immunities of the Specialized Agencies b/ is also applicable to certain personnel associated with peace-keeping operations. The Charter of the United Nations itself is also relevant, including Article 105.

7. The current legal framework for the protection of United Nations peace-keeping personnel is therefore a complex web of obligations set out in bilateral and multilateral agreements and customary rules of international law. From an examination of these bilateral and multilateral instruments the following general conclusions can be drawn:

(a) Existing obligations confer responsibility on States in all cases involving United Nations forces and personnel to ensure the prosecution of persons subject to their jurisdiction who are accused of acts of violence to or obstruction of United Nations forces and personnel;

(b) United Nations forces and personnel are in all cases accorded special international status;

(c) Members of United Nations forces and United Nations personnel are, in certain limited cases, accorded the status of internationally protected persons and are thereby covered by the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons; c/

(d) There are anomalies, inconsistencies and gaps in the legal framework;

(e) The obligations do not exist in a single coherent and up-to-date document.

General responsibility upon States under international law

8. The anomalies and inadequacies of current legal instruments create a serious risk that those who seek to frustrate United Nations peace-keeping operations will believe they can act with impunity and if challenged, may try to cast doubt on the existence of applicable norms of international law.

9. As the above analysis indicates, the basic principle of State responsibility under international law for the safety and security of United

Nations forces and personnel is clearly established, although there are variations in the scope of this norm.

10. It is the view of the New Zealand Government that, in addition to the specific treaty-based obligations that exist in international law, there also already exist in international law parallel norms of customary international law. These oblige all States in whose territory peace-keeping forces are deployed to ensure that United Nations forces and personnel are not obstructed in carrying out their Security Council mandate. Violence and the use of force against United Nations forces and personnel would be the clearest and most graphic example of a violation of these norms and must therefore be considered as also prescribed under customary international law.

11. The view of the New Zealand Government is based not only on the existence of a network of principles and obligations contained in current multilateral and bilateral treaty instruments, but also in the practice of the United Nations, as evidenced in resolutions of the General Assembly and specific demands by the Security Council, and the practice of Member States. It is founded also on the proposition that all States Members of the United Nations undertook, in Article 25 of the Charter, to carry out in good faith the decisions of the Security Council. Where the Security Council takes action or adopts measures involving the deployment of a peace-keeping force, a mandate is established. Attempts to frustrate, delay or obstruct such a mandate, including by the use of force against United Nations personnel are inconsistent with good-faith performance of the obligations undertaken in Article 25 and in some cases, Article 49 of the Charter.

12. In summary, New Zealand believes that the relevant principles and obligations in customary international law can be stated as follows:

(a) States are obliged to take the necessary measures to ensure that Security Council mandates are not obstructed or frustrated and, in particular that United Nations personnel operating pursuant to mandates are not subject to obstruction, detention or the use of force;

(b) The use of force against United Nations personnel engages international legal responsibility and constitutes a violation of obligations owed collectively to all Member States and to the United Nations itself;

(c) States' obligations extend to taking action promptly to deter, prosecute and punish all those responsible for the use of force against United Nations personnel.

Situations where States are unable to exercise responsibility

13. The Security Council has established mandates for peace-keeping and peace enforcement in an increasing number of situations where the traditional assumptions about peace-keeping no longer apply. Thus, in Somalia there is no functioning Government to assume bilateral responsibilities under a status-of-forces agreement or discharge obligations under international law. In other cases one or more of the parties to the conflict which has given rise to the United Nations deployment are not States or recognized entities capable of

entering into treaty relations or assuming responsibilities under international law. In such cases the international community may not reasonably be able to expect a State to assume responsibility for the actions of such entities.

14. Where a Government is unable to carry out obligations to protect United Nations personnel, for example where it has lost control of a part of its territory or, in extreme cases, where there is no Government, the Security Council is faced with responding, in an ad hoc way, to attacks on United Nations personnel. But recent examples (resolution 804 (1993) on Angola and resolution 792 (1992) on Cambodia) indicate the limited options at the Council's disposal. As the General Assembly recognized in resolution 47/72 the Security Council may be faced with situations where its only option is to exercise enforcement powers under Chapter VII - to take sanctions or use force in appropriate cases where safety is threatened by provocative action.

15. In essence the current situation leaves the United Nations, when confronted with attacks on its forces or personnel, with the difficult choice of either allowing its mandate to be frustrated or escalating the level of measures. Confronted with a situation in which there is no local legal system to detain, try and punish offenders, United Nations forces on the ground will need to resort to increasingly robust rules of engagement.

The case for individual responsibility

16. The view of the New Zealand Government is that the case for holding personally responsible those who violate obligations regarding the safety of United Nations forces and personnel is compelling. There is a very strong parallel with the "grave breaches" concept in international humanitarian law. The Geneva Conventions d/ establish the principle of individual criminal responsibility, subject to universal jurisdiction, for offences in a conflict situation against civilians and military forces that are for various reasons no longer combatants. This can include wounded, prisoners and medical personnel.

17. The situation of United Nations peace-keeping and related personnel has many similarities. But United Nations forces and personnel are not covered by the Geneva Conventions. Nevertheless United Nations forces are deployed into zones of actual or potential conflict. However, peace-keeping forces are not combatants and the civilian component is certainly never combatant.

18. New Zealand believes that there is every reason for ensuring that international law protecting United Nations forces and personnel is no less effective than international law protecting the soldiers actually engaged in fighting a war. The inclusion in the United Nations legal framework of measures giving United Nations forces and civilian personnel protection equivalent to the "grave breaches regime" should therefore be a high priority.

Action required

19. The view of the New Zealand Government is that action is required at several levels within the United Nations system to enhance the safety and security of United Nations forces and personnel:

(a) A restatement of the United Nations expectations of Member States is urgently required. A clear, concise and coherent statement of the current rules of international law and the obligations of Member States in a single document should be of significant practical assistance;

(b) Every new mandate approved by the Security Council should contain provisions which draw specific attention to the statement of United Nations expectations regarding the safety and security of United Nations forces and personnel. This could take the form of an annex to the relevant resolution which could be adapted to meet specific situations. Such provisions could also be included in future status-of-forces agreements between the United Nations and host countries;

(c) Further development of the legal framework is also essential. This could include provisions to deal with jurisdiction over persons who violate norms of international law governing the protection of United Nations forces and personnel in circumstances where no State can assume responsibility for detention, trial and punishment of such violations. In such cases, if jurisdiction was able to be exercised internationally, on the basis of individual responsibility, there would be less incentive to use lethal force in the field and less need for the Security Council to consider the graver options of resort to Chapter VII action;

(d) Restructuring in United Nations Headquarters is needed to establish a capability to predict, assess and respond to situations in the field likely to result in threats to United Nations personnel.

Modalities

20. New Zealand proposes that:

(a) A declaration be adopted, if possible jointly or in parallel, by the Security Council and the General Assembly. Such a declaration would constitute the restatement referred to in paragraph 19 above. Desirably the text should be formulated in cooperation between the Special Committee and the Security Council;

(b) A process be established to review and update the legal framework applicable to United Nations forces and personnel bearing in mind the consultations outlined in paragraphs 21 to 23 below;

(c) A Convention should be developed to codify and further develop international law relating to the protection and safety of United Nations forces and personnel dealing in its elaboration with the principle that peace-keepers should be at least as well protected as combatants.

The problem of the non-State party to a conflict

21. Increasingly United Nations forces and personnel are deployed under mandates which require them to "keep the peace" in a situation of armed conflict between a Government and a faction or movement within a State. As discussed

above, there are problems in such cases in relying upon treaty-based instruments for the application of rules and norms of international law. Under classical principles of international law entities that are not States are not subjects of international law. It is simplistic simply to rely on multilateral conventions for establishing rules applicable in such conflicts. Almost by definition the entities in question will not be able to become party to such instruments and, in some cases, they may seek to exploit this situation and ignore the applicable principles of international law. The real issue is how jurisdiction may be exercised over such people in situations where States cannot impose territorial jurisdiction.

22. New Zealand believes that it is important therefore that the process of development of United Nations law in the area of protection and safety of United Nations forces and personnel not be limited to the traditional multilateral convention. Innovative processes for the development of international law are called for. In this regard New Zealand notes that the binding legal powers of the Security Council coupled with the moral authority of the General Assembly, if used in cooperation and with determination, offer the possibility, in the special case of peace-keeping forces and personnel, for the creation of very effective norms. Such a process has the potential to overcome the constraints of a purely treaty-based approach.

23. With the above in mind, New Zealand suggests that the declaration which it has proposed be subject to revision and updating in the light of experience and with a view, in particular, to incorporating norms that will be applicable to and enforceable upon all the participants whether States or other entities in conflicts where the United Nations is called upon to keep the peace.

Notes

a/ General Assembly resolution 22 A (I).

b/ General Assembly resolution 179 (II).

c/ United Nations Treaty Series, vol. 1035, No. 15410.

d/ Ibid., vol. 75, Nos. 970-973.

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25668
26 April 1993

ORIGINAL: ENGLISH

REPORT OF THE SECRETARY-GENERAL PURSUANT TO SECURITY COUNCIL RESOLUTION 820 (1993)

I. INTRODUCTION

1. In operative paragraph 8 of its resolution 820 (1993) of 17 April 1993, the Security Council requested the Secretary-General to submit a report to the Council containing an account of the preparatory work for the implementation of the proposals referred to in paragraph 28 of his report of 26 March 1993 (S/25479) and detailed proposals for the implementation of the Peace Plan, including arrangements for the effective international control of heavy weapons, based inter alia on consultations with Member States, acting nationally or through regional organizations or arrangements.

2. Despite the efforts of the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia in recent weeks and, in particular, the intensive round of talks conducted by Lord Owen from 21 to 25 April 1993, the Bosnian Serbs have not signed the Peace Plan. It is not, therefore, possible to judge when, or even if, it will be implemented. However, the following report outlines for the information of the Security Council the preparatory activities which the Secretary-General has undertaken in the hope that the Peace Plan would be accepted by all the parties concerned in Bosnia and Herzegovina.

II. PREPARATIONS FOR MILITARY ARRANGEMENTS

3. The agreement for peace in Bosnia and Herzegovina which is reproduced as Annex IV to Security Council document S/25479 includes a wide range of measures requiring the deployment of additional peace-keeping troops in Bosnia and Herzegovina. These measures include the cessation of hostilities throughout Bosnia and Herzegovina, the restoration of infrastructure, the opening of routes, the separation of forces, the demilitarization of Sarajevo, the monitoring of the borders of Bosnia and Herzegovina, and the return of forces to designated provinces.

4. At a very early stage of the negotiations led by the Co-Chairmen of the Steering Committee of the International Conference on the former Yugoslavia it became obvious that the multitude of tasks envisaged in the Peace Plan would exceed the planning capability of the Secretariat and that of the United Nations Protection Force (UNPROFOR). At the time, Member States acting in the context

of a regional arrangement, the North Atlantic Treaty Organization (NATO), had initiated preliminary studies on the subject. The Secretary-General in a letter dated 11 December 1992 invited the Secretary-General of NATO to share any relevant information on these preliminary studies with the United Nations. Since then, NATO delegations have visited United Nations Headquarters in New York on 3 March, 29 March and 7 April 1993, for informal exchanges of views with the Department of Peace-keeping Operations. In addition, NATO military teams visited UNPROFOR in Zagreb to explore operational requirements should NATO be invited to plan for the implementation of the Peace Plan for Bosnia and Herzegovina.

5. In the context of these consultations, a broad operational concept has emerged, the details of which would be subject to further planning and, in particular, to approval by the Security Council and the Member States concerned. The implementation would involve a United Nations operation conducted under the authority of the Security Council and financed collectively by United Nations Member States under the peace-keeping scale of assessments. The United Nations would have overall political and strategic control which would be exercised by the Secretary-General under the authority of the Security Council.

6. The NATO interlocutors indicated that NATO would be willing to consider a formal request to undertake detailed planning for the implementation of the Plan, including ground reconnaissance and related activities. If requested, they would also consider making available a core headquarters structure into which other potential troop contributors could be incorporated. On the basis of preliminary studies, they estimated that some 60,000 to 75,000 troops would be required for the implementation of the various military tasks envisaged in the Peace Plan.

7. The withdrawal of heavy weapons is part of the agreement on cessation of hostilities annexed to the Agreement for Peace in Bosnia and Herzegovina (S/25479). In a letter dated 2 March addressed to the Co-Chairman, the then Force Commander of UNPROFOR, General Satish Nambiar, said that once substantial numbers of additional troops arrived in Bosnia and Herzegovina, it would be possible to deal fully with the concerns of both the Bosnian Government and the Bosnian Serbs. He considered that, with sufficient numbers of troops, physical control of heavy weapons could be undertaken, thus meeting the concerns of the Bosnian Government, and that there could then be adequate deployment of ground troops and observers to ensure physical separation of the opposing forces, which would meet one of the concerns of the Bosnian Serbs (S/25403, para. 10). The matter was raised in the informal talks with the representatives of NATO and, accordingly, would be given the appropriate attention in the final deployment plan and concept of operations for the implementation of the Peace Plan.

III. PREPARATIONS FOR CIVILIAN ARRANGEMENTS

8. The principal civilian tasks envisaged in the Peace Plan include

- the restoration of law, order and civil authority throughout Bosnia and Herzegovina in conformity with the nine constitutional principles;

- the preparation of a constitution in accordance with the nine principles;

- the resolution of problems concerning provincial borders, and related political issues;

- the preparation of internationally supervised, free and fair elections to be held for the central government as well as the provincial governments;

- the provision of arrangements for the highest level of internationally recognized human rights through domestic and international mechanisms;

- the reversal of "ethnic cleansing" and the establishment of conditions in which those refugees and displaced persons who wish to return to their homes may do so;

- the provision of humanitarian aid and appropriate levels of relief and rehabilitation assistance.

9. The majority of these tasks will require close coordination and cooperation between the military and civilian components of the operation not only in terms of their respective mandates but also in terms of logistical and administrative arrangements. This coordination would be exercised by an official appointed by the Secretary-General.

10. The tasks foreseen in the Peace Plan would require expertise in restoration and maintenance of civil law and order; in civil mediation and reconciliation; in the human rights and humanitarian fields; in legal and constitutional matters; in planning, organizing and supervision of elections; in establishing and maintaining close relations with the central government and the provincial governments; and in civil reconstruction projects. While a number of these tasks could be handled by an extensive, well trained and qualified United Nations Civil Police (UNCIVPOL) contingent, additional expertise in human rights and election monitoring, legal, administrative and even civil engineering matters would be required. Moreover, the importance of an effective public information programme cannot be over-emphasized. The successful implementation of the Peace Plan would, to a large extent, depend on the ability to reach out to the people of Bosnia and Herzegovina and to explain the objectives of the United Nations presence.

11. More detailed plans for the implementation of the multitude of responsibilities emanating from the various provisions of the Peace Plan were being drawn up. Preliminary studies had already revealed that the magnitude and complexity of the tasks involved would require a flexible approach in identifying the necessary human resources. It had become clear that the number of staff required could not be met from the existing staff resources of the United Nations which are already stretched to the limit because of the many requirements of existing peace-keeping and other missions. Assistance by Member States would therefore be essential both in the secondment of personnel and, in appropriate cases, the identification of qualified personnel who met the standards established by the United Nations Charter. I would of course take the necessary steps to adapt and streamline the relevant internal procedures so as

to enable the Organization to respond to the civilian staffing requirements of the Peace Plan in a flexible and expeditious manner.

12. With regard to the proposals referred to in paragraph 28 of my report of 26 March 1993 (S/25479), I had carefully studied the requirements for establishing the International Human Rights Monitoring Mission. It would be my intention that, as the Peace Plan was accepted by all concerned, I would designate the Human Rights Commissioner and report to the Council on the human and financial resources required for the Monitoring Mission. Likewise, upon completion of signature of the Peace Plan, I would also designate, in consultation with the Co-Chairmen, the members of the Boundary Commission and inform the Council on the resources required for the operation of that Commission in the context of a detailed report on the overall requirements for the implementation of the Peace Plan.

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25669
27 April 1993

ORIGINAL: ENGLISH

LETTER DATED 26 APRIL 1993 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

Pursuant to the request contained in the statement made by the President of the Security Council on 5 April 1993 (S/25530), I have the honour to submit the following information relating to recent incidents which resulted in the deaths of members of the United Nations Transitional Authority in Cambodia (UNTAC).

On 27 March 1993 at approximately 1950 hours, an UNTAC post in Angkor Chum district in Siem Reap Province occupied by a unit of the Bangladesh contingent came under mortar and small-arms fire. The attackers advanced to within 200 to 300 metres. The UNTAC soldiers returned fire from their trenches, using small-arms fire and grenades. They were able to stop the attackers' advance and the attackers gradually retreated. The attack lasted for about one hour followed by intermittent firing of small arms and mortars. Evidence subsequently came to light that two of the attackers had been killed.

Early in the attack, a Bangladeshi soldier was wounded. He was evacuated by air to UNTAC Field Hospital in Siem Reap but he subsequently died from his wounds in the early hours of the following day. Four Cambodian civilians were also injured in the incident.

Investigation by UNTAC strongly indicates that the attack was deliberately directed against the UNTAC position by members of the National Army of Democratic Kampuchea (NADK). It appears that members of the Cambodian People's Armed Forces (CPAF), who were located some 1,000 metres away, may also have returned fire against the attackers.

On 29 March 1993 at approximately 2300 hours, a Bangladeshi civilian member of UNTAC was shot through the head and killed as the car in which he was a passenger passed a group of CPAF soldiers in central Phnom Penh.

The victim was travelling in an unmarked car with two other Bangladeshi nationals, one of whom was a member of the UNTAC Civilian Police Component; the other was a non-UNTAC civilian. The CPAF soldiers were apparently manning a check-point and fired on the car when it passed. The CPAF authorities have since arrested two soldiers and charged them with the murder of the UNTAC staff member.

In the evening of 2 April 1993, at an UNTAC post at Phum Prek in Kompong Speu Province, the local NADK commander, accompanied by two soldiers, joined the 11 members of the Bulgarian battalion stationed there for dinner. Relations between the Bulgarian soldiers and the local NADK members had previously been good.

After dinner the NADK commander left and returned at about 2305 hours with 10 to 15 armed soldiers. The NADK members then opened fire on the unarmed Bulgarian soldiers with automatic weapons and hand grenades, killing three and wounding three others, before withdrawing.

Later that night and until dawn of the next day the Bulgarian camp again came under NADK mortar and small-arms fire, but there were no further UNTAC losses.

The six casualties were transported by road to the nearby Bulgarian contingent position at Amelean, also in Kompong Speu Province, where the three wounded were airlifted to Phnom Penh. One is being treated in the UNTAC Field Hospital in Phnom Penh and the other two have been evacuated to Bangkok for further treatment.

On the night of 5 April 1993 at approximately 2345 hours, the Bulgarian position at Amelean came under machine-gun fire and a sentry was wounded in the abdomen. The wounded soldier was evacuated for medical treatment to Bangkok, where it was determined that his spinal cord was damaged, resulting in the paralysis of both legs.

On the morning of 8 April 1993 at approximately 0745 hours, a United Nations Volunteer of Japanese nationality in the UNTAC Electoral Component and his Cambodian interpreter were detained by armed and uniformed men as they were travelling by car in Prasat Sambo District, Kompong Thom Province. They were shot and died of their wounds. UNTAC has not been able to determine responsibility for this act, which took place in an area contested by the forces of different factions, and investigations are proceeding on an urgent basis.

On 19 April 1993 at approximately 0230 hours, the UNTAC District headquarters in Oaral District, Kompong Speu Province, came under attack. The office is in the vicinity of a CPAF camp. An Indonesian Civilian Police monitor who, together with four Bulgarian soldiers, was in the District headquarters at the time radioed for assistance and a Fast Response Team was dispatched from a nearby Bulgarian company position to the scene. This consisted of an armoured personnel carrier (APC) with seven soldiers.

When the APC was approximately 1.5 kilometres from the District headquarters, it came under fire from both sides. One anti-tank grenade hit the vehicle from the right side and penetrated the armour. One Bulgarian soldier was killed instantly and five others were wounded, one of them seriously.

The attackers ransacked, looted and caused serious damage to the UNTAC District office, and the nearby District Civil Administration office also came under attack. In addition, the attackers, who were said to number about 100, destroyed a total of seven buildings belonging to local people. In the course

of the attack on the UNTAC office, an Indonesian Civilian Police monitor and a Cambodian interpreter were also injured.

Preliminary investigations by UNTAC indicate that members of NADK were responsible for the attack. In view of the fact that the UNTAC offices were located adjacent to a CPAF camp and that non-UNTAC buildings were also destroyed in the attack, it cannot be concluded that UNTAC was the target, or at least the sole target of the attack.

(Signed) Boutros BOUTROS-GHALI

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25670
27 April 1993

ORIGINAL: ENGLISH

LETTER DATED 27 APRIL 1993 FROM THE PERMANENT REPRESENTATIVE OF BOSNIA AND HERZEGOVINA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

Despite Security Council resolution 819 (1993) of 16 April 1993 and despite the presence of 150 United Nations Protection Force (UNPROFOR) troops, Serb paramilitary units are rapidly advancing on Srebrenica, supplemented by intense barrages of heavy artillery. These resumed attacks put Srebrenica's civilian population in grave danger of expulsion and extermination.

The mandate under which UNPROFOR now operates in Srebrenica handicaps UNPROFOR in carrying out its mission: namely, protecting the town's 60,000 civilian inhabitants. The current Serbian offensive further makes this task all but impossible.

Recalling the primary responsibility of the Security Council, under the Charter for the maintenance of international peace and security and believing that the Council has a commitment to enforce its resolutions and further believing that the Council does not exclude Srebrenica's 60,000 civilians from the realm of these responsibilities, the Presidency of the Republic of Bosnia and Herzegovina requests that the Council expand UNPROFOR's mandate in Srebrenica so that it may successfully carry out the mission entrusted to it by the Council.

May I ask for your kind assistance in circulating this letter as a document of the Security Council.

(Signed) Muhamed SACIRBEY
Permanent Representative

93-24097 (E) 270493 270493

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25671
27 April 1993

ORIGINAL: ENGLISH

LETTER DATED 27 APRIL 1993 FROM THE PERMANENT REPRESENTATIVE OF TURKEY TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

On instructions from my Government, I have the honour to respond to the letter dated 19 April 1993 addressed to you by the Permanent Representative of Armenia (document S/25626) which contains allegations and distortions in connection with Turkey's position vis-à-vis the conflict between Armenia and Azerbaijan.

In his letter, the Permanent Representative of Armenia refers to "unfriendly statements made by Turkish leaders". He should have qualified these statements as "friendly" since in their statements Turkish leaders have not but urged Armenia to stop aggression against its neighbour Azerbaijan, to withdraw from the Azerbaijani territories it occupied, to respect its commitments under the United Nations Charter and CSCE principles, and invited Armenia to contribute to peace and stability in the region which, in the opinion of the Turkish Government, will be to the benefit of the Armenian people who recently gained their independence.

The information given by "Radio of Russia" with reference to the Turkish newspaper "Hurriyet" in connection with alleged shipment of weapons to Azerbaijan, as well as allegations concerning transportation from Turkey of servicemen disguised as civilians to Nakhichevan are totally unfounded and deliberately fabricated by the Armenian authorities in order to divert the attention of the entire world from their aggressive policy.

In his letter the Permanent Representative of Armenia also questions the fate of 500 Armenian tourists and alleges that they have been prevented from boarding a train going back to Armenia. If he had checked the validity of this information with his authorities, he would have known that the tourist group was safely back home.

Turkey expects Armenia to put an end to the aggression and withdraw from the Azerbaijani territories it occupies. We call on the Armenian Government to respect its international commitments and clear the way to a political settlement of the existing issues between Armenia and Azerbaijan. When and if these expectations materialize Turkey would be ready to resume good neighbourly relations with Armenia which would greatly contribute to its integration with the international community.

I should be grateful if this letter is circulated as a document of the Security Council.

(Signed) Inal BATU
Ambassador
Permanent Representative

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25672
27 April 1993

ORIGINAL: ENGLISH

LETTER DATED 27 APRIL 1993 FROM THE PERMANENT REPRESENTATIVE OF ALBANIA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to attach herewith the letter that Mr. Dr. Alfred Serreqi, Minister for Foreign Affairs of the Republic of Albania, addresses to Your Excellency in relation with the grave situation in the northern border of Albania, and in Kosova.

I would be grateful if Your Excellency could have this letter circulated as a document of the Security Council.

(Signed) Thanas SHKURTI
Ambassador
Permanent Representative

Allow me to express to you, through this letter, the deep concern of the Albanian Government about the extraordinary situation created by the Serb military forces in the north border with the Republic of Albania.

On 25 April 1993, in the time interval between 20.30-21.30, in two border zones, near the region border sign D-11, in Morine-Kukes, and in the border region C-2/10, Padesh-Tropoje, the Serb forces opened fire and killed the Albanian citizens Bohar Aden Hafizi (23), Ethem Toti Syla (24), Morsin Hysen Syla (24), Hysen Asllan Syla (31), Monsur Skender Syla (17), Astrit Dyrmishi (20) - all of them residents of the Albanian villages near the border. On 26 April 1993, in the same border area were also killed two other Albanian citizens, not yet identified.

From the verification and expertise about the circumstances of these events, it comes out that the military Serb forces have shot with fire arms against the Albanian citizens from a close position, without warning. The number of victims killed in this manner in that border only this year reaches 12 (twelve) people.

These repeated and intentional acts have arisen a deep indignation among Albanians on both sides of the border. At the same time, they represent a dangerous prerogative, which might heighten the tension and breach the peace in this region.

Our concern about these tragic events becomes even greater if we have in mind the concentration of military Serb forces in the border regions, and especially the inclusion of the paramilitary forces to guard the border with Albania. After a series of such killings now it can't be spoken anymore of sporadic border incidents, but of provocative actions, which have dangerous intentions.

Being aware of the very tense situation created by the Yugoslav crises, especially the war in Bosnia-Herzegovina, as well as the situation in Kosova, the Republic of Albania is trying continuously to give its contribution to prevent the escalation of the conflict in the south. The Albanian Government has demonstrated very clearly that it stands for stability and peace in our region. It has supported politically and is seriously committed to the implementation of the United Nations Security Council's resolutions related to Yugoslav crises.

But with regret we note that the universal principles of the human rights and those which regulate the relations between neighbouring States are brutally and openly violated by the Serb authorities. Such violations, as it seems, intend to provoke unnecessary conflicts in the territories inhabited by Albanians on both sides of the border, and probably further than that.

The Government of the Republic of Albania asks the United Nations Security Council to pay the due attention to these acts of the Belgrade authorities, and by denouncing them, take the necessary preventive measures. Consequences which derive by such an unreasonable conduct might create a dangerous situation for the region.

Hoping that our concern will meet the understanding of the Security Council which you preside.

(Signed) Alfred SERREQI

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25673
27 April 1993

ORIGINAL: ENGLISH

LETTER DATED 23 APRIL 1993 FROM THE SECRETARY-GENERAL
ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to refer to my letter of 31 March 1993 addressed to the President of the Security Council and to your reply dated 5 April 1993 on the subject of the list of countries contributing contingents to the United Nations operation in Somalia (UNOSOM II).

I now wish to inform you that in addition to the countries approved by the Security Council on 5 April, the following countries have likewise signified their readiness to contribute contingents for service with UNOSOM II: Namibia, Uganda and Zambia.

I should therefore appreciate it if the Security Council would approve this addition to the list of troop contributing countries for UNOSOM II.

(Signed) Boutros BOUTROS-GHALI

93-24159 (E) 270493

270493

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25674
27 April 1993

ORIGINAL: ENGLISH

LETTER DATED 27 APRIL 1993 FROM THE PRESIDENT OF
THE SECURITY COUNCIL TO THE SECRETARY-GENERAL

I have the honour to inform you that your letter dated 23 April 1993 (S/25673) concerning the composition of the military component of the United Nations Operation in Somalia (UNOSOM II) has been brought to the attention of the members of the Council. They agree with the proposal contained in your letter.

(Signed) Jamsheed K. A. MARKER
President of the Security Council

93-24153 (E) 270493

270493

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25675
28 April 1993

ORIGINAL: ENGLISH

France, Spain, the United Kingdom of Great Britain and Northern Ireland and the United States of America: draft resolution

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Considering that the State formerly known as the Socialist Federal Republic of Yugoslavia has ceased to exist,

Recalling resolution 757 (1992) of 30 May 1992 which notes that "the claim by the Federal Republic of Yugoslavia (Serbia and Montenegro) to continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations has not been generally accepted",

Recalling also its resolution 777 (1992) of 19 September 1992, in which it recommended to the General Assembly that it decide that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly,

Recalling further that the General Assembly by resolution 47/1 of 22 September 1992, having received the recommendation of the Security Council of 19 September 1992, considered that the Federal Republic of Yugoslavia (Serbia and Montenegro) could not continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations; and therefore decided that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly,

Recalling further that in its resolution 777 (1992) the Council decided to consider the matter again before the end of the main part of the forty-seventh session of the General Assembly, and that in December 1992 the members of the Council agreed to keep the subject-matter of resolution 777 (1992) under continuous review and to consider it again at a later date (S/24924),

1. Reaffirms that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations; and therefore recommends to the General Assembly that, further to the decisions taken in resolution 47/1, it decide that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the Economic and Social Council;

2. Decides to consider the matter again before the end of the forty-seventh session of the General Assembly.

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25676
27 April 1993

ORIGINAL: ENGLISH

REPORT BY THE SECRETARY-GENERAL CONCERNING THE CREDENTIALS OF THE REPRESENTATIVE OF CHINA ON THE SECURITY COUNCIL

Pursuant to rule 15 of the provisional rules of procedure of the Security Council, the Secretary-General wishes to report that he has received credentials signed on 21 January 1993 by the Minister of Foreign Affairs of China stating that Mr. Li Zhaoxing has been appointed representative of China on the Security Council.

In the opinion of the Secretary-General, these credentials are in order.

93-24165 (E) 270493

270493

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25677
27 April 1993
ENGLISH
ORIGINAL: ARABIC

LETTER DATED 26 APRIL 1993 FROM THE PERMANENT REPRESENTATIVE OF IRAQ TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

On instructions from my Government and with reference to the letter from the representative of the Kuwaiti regime (S/25618), I have the honour to draw attention to the report of the Secretary-General on the activities of the United Nations Iraq-Kuwait Observation Mission (UNIKOM) for the period 1 October 1992-31 March 1993 (S/25514), which is the same report as the one referred to by the representative of the Kuwaiti regime in his above-mentioned letter. This report states quite categorically that the number of Kuwaiti violations during the above-mentioned period totalled 35, as against 11 violations recorded on the Iraqi side.

In the previous report of the Secretary-General (S/24615), which covers the period 1 April-30 September 1992, 39 violations are recorded on the Kuwaiti side, as against 5 violations on the Iraqi side.

In the report of the Secretary-General prior to that (S/23766), which covers the period 3 October 1991-31 March 1992, 100 violations are recorded on the Kuwaiti side, as against 4 violations on the Iraqi side. Thus we see that the total violations of the cease-fire provisions and of the demilitarized zone committed by the Kuwaiti regime during the period 3 October 1991-31 March 1993 amounted to 174, as against 20 violations recorded on the Iraqi side.

In face of the above, can the Kuwaiti representative deny those flagrant violations documented in the reports of the Secretary-General, in the same devious way as he denies that his regime committed violations of the cease-fire provisions in his above-mentioned letter?

I should be grateful if you would have this letter circulated as an official document of the Security Council.

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

93-24176 (E) 280493 290493

290493

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25678
27 April 1993
ENGLISH
ORIGINAL: ARABIC

LETTER DATED 26 APRIL 1993 FROM THE PERMANENT REPRESENTATIVE OF IRAQ TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

On instructions from my Government, I have the honour to inform you that, during the period from 20 to 24 April 1993, United States aircraft continued to violate Iraqi airspace for the purpose of surveillance and provocation.

20 April 1993

(a) Northern region: 16 sorties, flown at speeds of 600-900 km/h and at altitudes of 6,000-7,500 m, centred on Zakho, Mosul, Irbil, Dohuk and Amadiyah.

(b) Southern region: 67 sorties, flown at speeds of 600-900 km/h and at altitudes of 7,000-10,000 m, centred over Basra, Qurnah, Nasiriyah, Samawah, Shatrah, Artawi, Salman and Khidr.

21 April 1993

(a) Northern region: 32 sorties, flown at speeds of 600-900 km/h and at altitudes of 7,000-8,000 m, centred on Mosul, Irbil, Dohuk, Tall Afar, Zakho, Sinjar and Amadiyah.

(b) Southern region: 56 sorties, flown at speeds of 600-900 km/h and at altitudes of 6,000-11,000 m, centred on Nasiriyah, Samawah, Salman, Qurnah, Jalibah and Busayyah.

22 April 1993

(a) Northern region: No hostile air activity was recorded in the area on this date.

(b) Southern region: 28 sorties, flown at speeds of 600-900 km/h and at altitudes of 7,500-11,000 m, centred on Nasiriyah, Samawah, Jalibah, Basra and Busayyah.

23 April 1993

(a) Northern region: No hostile air activity was recorded in the area on this date.

(b) Southern region: 42 sorties, flown at speeds of 600-900 km/h and at altitudes of 7,000-10,000 m, centred on Basra, Qurnah, Samawah, Artawi, Jalibah, Salman and Nasiriyah.

24 April 1993

(a) Northern region: 26 sorties, flown at speeds of 600-900 km/h and at altitudes of 6,000-8,000 m, centred on Mosul, Dohuk, Tall Afar, Amadiyah, Zakho, and Irbil.

(b) Southern region: 26 sorties, flown at speeds of 600-900 km/h and at altitudes of 7,000-8,500 m, centred on Nasiriyah, Samawah, Salman, Qurnah, Jalibah and Busayyah.

- At 1250 hours on 24 April 1993, a United States TR-1 aircraft was detected engaging in hostile reconnaissance over the Umm Qasr area. It was flying at a speed of 600 km/h and at an altitude of 20,000 m. At 1515 hours on the same day, it disappeared over the Hafr al-Batin area inside Saudi Arabian airspace.

I should be grateful if you would have this letter circulated as an official document of the Security Council.

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25679
27 April 1993
ENGLISH
ORIGINAL: ARABIC

LETTER DATED 26 APRIL 1993 FROM THE PERMANENT REPRESENTATIVE OF IRAQ TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

On instructions from my Government and further to my letter dated 26 April 1993, I have the honour to inform you that, on 20 April 1993, the Iranian side resumed bombarding the Qal'at Dizah valley, while Iranian forces massed on the Iranian side of the frontier to the east of the Iraqi town of Panjwin. This caused many families to flee the Panjwin area in order to escape the possibility of bombardment of the town by the massed Iranian units.

My Government protests vehemently at the persistence of the Iranian regime in continuing this fresh aggression against Iraq, which is a violation of Iraq's sovereignty and territorial integrity, and vehemently condemns the Iranian regime's persistence in violating Security Council resolution 598 (1987) by its commission of these acts of aggression.

Iraq reserves its full right to respond to these acts of aggression and its right to use any appropriate means to protect its legitimate rights and interests. We request you to take the measures imposed by the principles of the provisions of the Charter of the international Organization to prevent the Iranian side from repeating such acts of aggression, which are incompatible with the norms of international law.

I should be grateful if you would have this letter circulated as an official document of the Security Council.

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

93-24188 (E) 290493 290493

290493

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25680
27 April 1993
ENGLISH
ORIGINAL: ARABIC

LETTER DATED 26 APRIL 1993 FROM THE PERMANENT REPRESENTATIVE OF IRAQ TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

On instructions from my Government, I have the honour to inform you that, on 19 April 1993, the Iranian artillery bombarded civilian areas in the Qal'at Dizah valley, Pishtashan and Qirnago inside Iraqi territory in northern Iraq. This bombardment caused the death of and injuries to a number of civilians and forced more than 3,000 men, women and children to flee the area in order to escape from the Iranian attack.

My Government protests vehemently at this fresh Iranian act of aggression against Iraq, which is a flagrant violation of Iraq's sovereignty and territorial integrity and a clear breach of Security Council resolution 598 (1987), as well as blatant intervention in the internal affairs of Iraq. Iraq reserves its full right to respond to these acts of aggression, which give it the right to use any appropriate means to protect its legitimate rights and interests.

We request you to take the measures imposed by the principles of the provisions of the Charter of the international Organization to prevent the Iranian side from repeating such acts of aggression, which are incompatible with the norms of international law.

I should be grateful if you would have this letter circulated as an official document of the Security Council.

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

93-24194 (E) 290493 290493 290493

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25681
28 April 1993

ORIGINAL: ENGLISH

LETTER DATED 28 APRIL 1993 FROM THE DEPUTY PERMANENT REPRESENTATIVE OF BOSNIA AND HERZEGOVINA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

Under instructions from the Presidency of the Republic of Bosnia and Herzegovina, I wish to inform you that Serb and Montenegrin aggressors and their proxies inside the country have mounted a new ground and heavy artillery offensive in three critical areas, with the objective of consolidating their gains across northern and eastern Bosnia, and linking those areas to Serbia.

The region of Cazin, in north-western Bosnia, has been under heaviest attack yesterday and today. The heaviest casualties were reported in the town of Bihac. All reported fatal casualties were civilians. The Council should take special note that the attacks in this region originated from occupied territories in Croatia, under UNPROFOR control.

The aggressors have again renewed their attacks in the Posavina region, particularly on the city of Gradacac. The city's 56,000 pre-war residents, and many more refugees, now seem to be facing the same fate as the residents of Srebrenica. The city falls inside the critical northern corridor, linking aggressor-held areas in north-western and eastern parts of the country.

The renewed attacks have also begun on the three remaining large population centres in eastern Bosnia: Srebrenica, Zepa and Gorazde. These attacks threaten at least 101,000 civilian lives, based on pre-war population figures.

May I ask for your kind assistance in distributing this letter as a document of the Security Council.

(Signed) Ivan Z. MISIC
Ambassador and Deputy Permanent Representative

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25682
28 April 1993

ORIGINAL: ENGLISH

LETTER DATED 28 APRIL 1993 FROM THE PERMANENT REPRESENTATIVE OF UKRAINE TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

On 23 March 1993, the Minister for Foreign Affairs of Ukraine delivered a letter from the President of Ukraine to the Secretary-General of the United Nations concerning special economic problems arising from implementing mandatory sanctions established by Security Council resolutions 757 (1992) and 787 (1992) which was brought to the attention of the members of the Security Council.

On 19 April 1993, I had the honour to transmit to you, in accordance with Article 50 of the Charter of the United Nations, the text of the letter of the Minister for Foreign Affairs of Ukraine on this issue, circulated as a document of the Council (S/25630, annex). Furthermore, the Secretary-General of the United Nations, on my request, circulated as document S/25636 the text of the Appeal by the employees of the Danube Shipping Company in connection with the grave economic problems arising from carrying out by Ukraine of the Security Council sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro).

It would be greatly appreciated if the attention of the members of the Security Council is once again drawn to the above-mentioned documents and the Government of Ukraine is informed of any measures the Security Council might be willing to take to mitigate the negative consequences of the sanctions against the FRY for the neighbouring States, including Ukraine, especially after the adoption of Security Council resolution 820 (1993).

(Signed) Victor H. BATIOUK
Ambassador
Permanent Representative
to the United Nations

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25683
28 April 1993

ORIGINAL: ENGLISH

LETTER DATED 22 JUNE 1992 FROM THE PERMANENT REPRESENTATIVE OF HUNGARY TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL*

Upon instructions from my Government, I have the honour to communicate the following:

The Security Council, in resolution 757 (1992), has decided on a wide range of measures against Serbia and Montenegro. Being aware of its obligations under the Charter of the United Nations, the Republic of Hungary is fully committed to implement the above-mentioned resolution of the Security Council.

As a neighbouring country and a directly affected Member State of the United Nations, the Republic of Hungary, however, finds itself confronted with special economic problems arising from the carrying out of the measures set out in Security Council resolution 757 (1992).

Therefore, invoking Article 50 of the Charter of the United Nations, the Government of the Republic of Hungary wishes to consult the Security Council with regard to a solution of these problems.

I would appreciate if you could kindly inform the members of the Council about the aforementioned intention of my Government.

(Signed) André ERDOS
Ambassador
Permanent Representative

---

* Issued and circulated at the request of the Permanent Representative of Hungary to the United Nations.

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25684
28 April 1993
ENGLISH
ORIGINAL: RUSSIAN

LETTER DATED 27 APRIL 1993 FROM THE PERMANENT REPRESENTATIVE OF AZERBAIJAN TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to inform you that the demand set forth in the statement by the President of the Security Council of 6 April 1993 calling for the immediate withdrawal of Armenian armed units from the Kelbajar district of the Azerbaijani Republic is still being ignored by the Armenian side.

Furthermore, according to reports from the Azerbaijani Ministry of Defence, helicopters are continuing to transport personnel, weapons and ammunition from Armenia to Kelbajar. Valuable objects belonging to the Azerbaijani Republic and its citizens are being shipped out on return flights from populated areas in occupied Azerbaijani territory. At the same time, the Armenian armed forces are continuing engineering work aimed at strengthening their positions in the Kelbajar district.

The mass information media in Armenia are conducting a propaganda campaign attempting to establish a basis for the "age-old affiliation of Kelbajar with Armenia".

These and many other facts demonstrate that the Armenian armed units are not preparing to leave the territory of the Azerbaijani Republic occupied during recent fighting.

Under these conditions, we believe that only the adoption by the Security Council of a resolution demanding the immediate withdrawal of Armenian occupation troops from the Kelbajar district and its unconditional implementation by all sides could constitute the first real steps towards resumption of the negotiation process on a peaceful settlement of the Armenian-Azerbaijani conflict.

I should be grateful if you would arrange for the circulation of this letter as a document of the Security Council.

(Signed) Hassan A. HASSANOV
Ambassador
Permanent Representative

93-24412 (E) 280493 280493

280493

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25685
28 April 1993
ENGLISH
ORIGINAL: RUSSIAN

LETTER DATED 28 APRIL 1993 FROM THE PERMANENT REPRESENTATIVE OF AZERBAIJAN TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to inform you that, according to information received from the Ministry of Defence of Azerbaijan, following the departure from the zone of military operations of the technical observer group of the Conference on Security and Cooperation in Europe (CSCE), headed by Lieutenant-Colonel H. Hepponen, Armenian armed forces have significantly intensified their attacks in many sectors deep inside Azerbaijani territory.

In particular, the military operations of the Armenian armed forces have been significantly intensified in the Kelbajar-Khanlar and Kelbajar-Gyulyustan sectors. As we reported earlier, a few days ago the settlement of Gyulyustan was captured by Armenian armed formations. At present, Armenian units are consolidating the positions they have captured, transferring personnel, weapons and military supplies from Armenia and constructing engineering and technical installations at a rapid pace, all of which clearly indicates preparations for a further attack in the direction of the Geranboy district of Azerbaijan.

During the night of 28 April 1993, Armenian armed forces began shelling the settlements of Bashkend and Agjikend in the Geranboy district of Azerbaijan from the captured settlement of Gyulyustan.

In the morning of 28 April 1993, following massive artillery preparation, Armenian units launched an attack on the settlements of Galachilar, Elki, Khydyrly and Giyasly in the Agdam district east of Karabakh. As a result of artillery shelling and attacks by Armenian units, some civilians have been killed or wounded. On the same day, in the northern part of the Kelbajar district, units of the armed forces of Armenia once again launched an attack against the strategic height of Gyuzgyu in the Mrovdag range. The villages of Novosaratovka and Bashkend in the Kedabek district of Azerbaijan were subjected to artillery shelling from the Krasnoselsk district of Armenia.

The artillery and rocket bombardment of settlements in the Zangelan district of Azerbaijan, in the south-western part of the country, from the Kafan district of Armenia is continuing. There has been considerable destruction and some of the civilian population have been killed or wounded.

The foregoing may serve as confirmation that, taking advantage of the fact that the occupation of the Kelbajar district of Azerbaijan by Armenian armed forces has gone unpunished, those forces are most seriously preparing to broaden their expansion deep inside the territory of Azerbaijan.

I should be grateful if you would have this letter circulated as a document of the Security Council.

(Signed) Hassan HASSANOV
Ambassador
Permanent Representative

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/25686
29 April 1993

ORIGINAL: ENGLISH

LETTER DATED 27 APRIL 1993 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

In accordance with paragraph 2 of Article 41 of the Statute of the Court and Article 77 of the Rules of Court, I have the honour to transmit herewith the official text, in English and French, of the Order of the International Court of Justice, made on 8 April 1993 pursuant to Article 41 of the Statute of the Court, indicating provisional measures in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)). The above-mentioned text has just been received by pouch from the Registrar of the Court.

(Signed) Boutros BOUTROS-GHALI

Annex

[Original: English/French]

INTERNATIONAL COURT OF JUSTICE

YEAR 1993

1993
8 April
General List
No. 91

8 April 1993

CASE CONCERNING APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

(BOSNIA AND HERZEGOVINA v. YUGOSLAVIA (SERBIA AND MONTENEGRO))

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

ORDER

Present: *President* Sir Robert JENNINGS; *Vice-President* ODA; *Judges* AGO, SCHWEBEL, BEDJAOUI, NI, EVENSEN, TARASSOV, GUILLAUME, SHAHABUDDEEN, AGUILAR MAWDSLEY, WEERAMANTRY, RANJEVA, AJIBOLA; *Registrar* VALENCIA-OSPINA.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 35, 36, 41 and 48 of the Statute of the Court, and to Articles 73, 74 and 75 of the Rules of Court,

Having regard to the Application by the Republic of Bosnia and Herzegovina (hereinafter called "Bosnia-Herzegovina") filed in the Registry of the Court on 20 March 1993, instituting proceedings against the Federal Republic of Yugoslavia (Serbia and Montenegro) (hereinafter called "Yugoslavia") in respect of a dispute concerning

alleged violations by Yugoslavia of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948 (hereinafter called "the Genocide Convention"), as well as matters which Bosnia-Herzegovina maintains to be connected therewith,

Makes the following Order:

1. Whereas in the above-mentioned Application Bosnia-Herzegovina, basing the jurisdiction of the Court on Article IX of the Genocide Convention, recounts a series of events in Bosnia-Herzegovina from April 1992 up to the present day which, in its contention, amount to acts of genocide within the definition given in the Genocide Convention, specifically

(i) killing members of a group, namely Muslim inhabitants of Bosnia-Herzegovina;

(ii) causing serious bodily or mental harm to members of that group;

(iii) deliberately inflicting on that group conditions of life calculated to bring about its physical destruction in whole or in part; and

(iv) imposing measures intended to prevent births within that group;

and whereas Bosnia-Herzegovina claims that the acts complained of have been committed by former members of the Yugoslav People's Army (YPA) and by Serb military and paramilitary forces under the direction of, at the behest of, and with assistance from Yugoslavia; and whereas Bosnia-Herzegovina claims that Yugoslavia is therefore fully responsible under international law for their activities;

2. Whereas on the basis of the facts alleged in the Application Bosnia-Herzegovina requests the Court to adjudge and declare as follows:

"(*a*) that Yugoslavia (Serbia and Montenegro) has breached, and is continuing to breach, its legal obligations toward the people and State of Bosnia and Herzegovina under Articles I, II(*a*), II(*b*), II(*c*), II(*d*), III(*a*), III(*b*), III(*c*), III(*d*), III(*e*), IV, and V of the Genocide Convention;

(*b*) that Yugoslavia (Serbia and Montenegro) has violated and is continuing to violate its legal obligations toward the people and State of Bosnia and Herzegovina under the four Geneva Conventions of 1949, their Additional Protocol I of 1977, the customary international laws of war including the Hague Regulations on Land Warfare of 1907, and other fundamental principles of international humanitarian law;

(c) that Yugoslavia (Serbia and Montenegro) has violated and continues to violate Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26 and 28 of the Universal Declaration of Human Rights with respect to the citizens of Bosnia and Herzegovina;

(d) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has killed, murdered, wounded, raped, robbed, tortured, kidnapped, illegally detained, and exterminated the citizens of Bosnia and Herzegovina, and is continuing to do so;

(e) that in its treatment of the citizens of Bosnia and Herzegovina, Yugoslavia (Serbia and Montenegro) has violated, and is continuing to violate, its solemn obligations under Articles 1(3), 55 and 56 of the United Nations Charter;

(f) that Yugoslavia (Serbia and Montenegro) has used and is continuing to use force and the threat of force against Bosnia and Herzegovina in violation of Articles 2(1), 2(2), 2(3), 2(4), and 33(1), of the United Nations Charter;

(g) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has used and is using force and the threat of force against Bosnia and Herzegovina;

(h) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has violated and is violating the sovereignty of Bosnia and Herzegovina by:

- armed attacks against Bosnia and Herzegovina by air and land;

- aerial trespass into Bosnian airspace;

- efforts by direct and indirect means to coerce and intimidate the Government of Bosnia and Herzegovina;

(i) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has intervened and is intervening in the internal affairs of Bosnia and Herzegovina;

(*j*) that Yugoslavia (Serbia and Montenegro), in recruiting, training, arming, equipping, financing, supplying and otherwise encouraging, supporting, aiding, and directing military and paramilitary actions in and against Bosnia and Herzegovina by means of its agents and surrogates, has violated and is violating its express charter and treaty obligations to Bosnia and Herzegovina and, in particular, its charter and treaty obligations under Article 2(4) of the United Nations Charter, as well as its obligations under general and customary international law;

(*k*) that under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right to defend itself and its people under United Nations Charter Article 51 and customary international law, including by means of immediately obtaining military weapons, equipment, supplies and troops from other States;

(*l*) that under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right under United Nations Charter Article 51 and customary international law to request the immediate assistance of any State to come to its defence, including by military means (weapons, equipment supplies, troops, etc.);

(*m*) that Security Council resolution 713 (1991), imposing a weapons embargo upon the former Yugoslavia, must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of United Nations Charter Article 51 and the rules of customary international law;

(*n*) that all subsequent Security Council resolutions that refer to or reaffirm resolution 713 (1991) must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of United Nations Charter Article 51 and the rules of customary international law;

(*o*) that Security Council resolution 713 (1991) and all subsequent Security Council resolutions referring thereto or reaffirming thereof must not be construed to impose an arms embargo upon Bosnia and Herzegovina, as required by Articles 24(1) and 51 of the United Nations Charter and in accordance with the customary doctrine of *ultra vires*;

(*p*) that pursuant to the right of collective self-defence recognized by United Nations Charter Article 51, all other States parties to the Charter have the right to come to the immediate defence of Bosnia and Herzegovina - at its request - including by means of immediately providing it with weapons, military equipment and supplies, and armed forces (soldiers, sailors, airpeople, etc.);

(*q*) that Yugoslavia (Serbia and Montenegro) and its agents and surrogates are under an obligation to cease and desist immediately from its breaches of the foregoing legal obligations, and is under a particular duty to cease and desist immediately:

- from its systematic practice of so-called 'ethnic cleansing' of the citizens and sovereign territory of Bosnia and Herzegovina;

- from the murder, summary execution, torture, rape, kidnapping, mayhem, wounding, physical and mental abuse, and detention of the citizens of Bosnia and Herzegovina;

- from the wanton devastation of villages, towns, districts, cities, and religious institutions in Bosnia and Herzegovina;

- from the bombardment of civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;

- from continuing the siege of any civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;

- from the starvation of the civilian population in Bosnia and Herzegovina;

- from the interruption of, interference with, or harassment of humanitarian relief supplies to the citizens of Bosnia and Herzegovina by the international community;

- from all use of force - whether direct or indirect, overt or covert - against Bosnia and Herzegovina, and from all threats of force against Bosnia and Herzegovina;

- from all violations of the sovereignty, territorial integrity or political independence of Bosnia and Herzegovina, including all intervention, direct or indirect, in the internal affairs of Bosnia and Herzegovina;

- from all support of any kind - including the provision of training, arms, ammunition, finances, supplies, assistance, direction or any other form of support - to any nation, group, organization, movement or individual engaged or planning to engage in military or paramilitary actions in or against Bosnia and Herzegovina;

(*r*) that Yugoslavia (Serbia and Montenegro) has an obligation to pay Bosnia and Herzegovina, in its own right and as *parens patriae* for its citizens, reparations for damages to persons and property as well as to the Bosnian economy and environment caused by the foregoing violations of international law in a sum to be determined by the Court. Bosnia and Herzegovina reserves the right to introduce to the Court a precise evaluation of the damages caused by Yugoslavia (Serbia and Montenegro)";

3. Whereas by a request filed in the Registry on 20 March 1993 immediately after the filing of the Application, Bosnia-Herzegovina, invoking Article 41 of the Statute of the Court and Articles 73, 74, 75 and 78 of the Rules of Court, and relying on the facts set forth in the Application, urgently requested that the Court indicate the following provisional measures to be in effect while the Court is seised of this case:

"1. That Yugoslavia (Serbia and Montenegro), together with its agents and surrogates in Bosnia and elsewhere, must immediately cease and desist from all acts of genocide and genocidal acts against the people and State of Bosnia and Herzegovina, including but not limited to murder; summary executions; torture; rape; mayhem; so-called 'ethnic cleansing'; the wanton devastation of villages, towns, districts and cities; the siege of villages, towns, districts and cities; the starvation of the civilian population; the interruption of, interference with, or harassment of humanitarian relief supplies to the civilian population by the international community; the bombardment of civilian population centres; and the detention of civilians in concentration camps or otherwise.

2. That Yugoslavia (Serbia and Montenegro) must immediately cease and desist from providing, directly or indirectly, any type of support - including training, weapons, arms, ammunition, supplies, assistance, finances, direction or any other form of support - to any nation, group, organization, movement, militia or individual engaged in or planning to engage in military or paramilitary activities in or against the people, State and Government of Bosnia and Herzegovina.

3. That Yugoslavia (Serbia and Montenegro) itself must immediately cease and desist from any and all types of military or paramilitary activities by its own officials, agents, surrogates, or forces in or against the people, State and Government of Bosnia and Herzegovina, and from any other use or threat of force in its relations with Bosnia and Herzegovina.

4. That under the current circumstances, the Government of Bosnia and Herzegovina has the right to seek and receive support from other States in order to defend itself and its people, including by means of immediately obtaining military weapons, equipment, and supplies.

5. That under the current circumstances, the Government of Bosnia and Herzegovina has the right to request the immediate assistance of any State to come to its defence, including by means of immediately providing weapons, military equipment and supplies, and armed forces (soldiers, sailors, airpeople, etc.).

6. That under the current circumstances, any State has the right to come to the immediate defence of Bosnia and Herzegovina - at its request - including by means of immediately providing weapons, military equipment and supplies, and armed forces (soldiers, sailors, and airpeople, etc.)";

4. Whereas on 20 March 1993, the day on which the Application and the request for the indication of provisional measures were received in the Registry, the Registrar notified the Government of Yugoslavia of the filing of the Application and the request, and communicated the text thereof to it, by telefax, and sent certified copies of the Application and the request to it by express registered post on 22 March 1993, in accordance with Article 40, paragraph 2, of the Statute and Articles 38, paragraph 4, and 73, paragraph 2, of the Rules of Court;

5. Whereas, pending the notification under Article 40, paragraph 3, of the Statute and Article 42 of the Rules of Court, by transmittal of the printed bilingual text of the Application to the Members of the United Nations and other States entitled to appear before the Court, the Registrar on 25 March 1993 informed those States of the filing of the Application and of its subject-matter, and of the request for the indication of provisional measures;

6. Whereas on 25 March 1993, the Registrar, in accordance with Article 43 of the Rules of Court, addressed the notification provided for in Article 63, paragraph 1, of the Statute to the States, other than the Parties to the dispute, which on the basis of information supplied by the Secretary-General of the United Nations as depositary (ST/LEG/SER.E/10 and supplements to date) appeared to be parties to the Genocide Convention, and in addition addressed to the Secretary-General of the United Nations the notification provided for in Article 34, paragraph 3, of the Statute of the Court;

7. Whereas on 25 March 1993 the Registrar informed the Parties that the Court would hold public sittings on 1 and 2 April 1993 to hear the observations of the Parties on the request for the indication of provisional measures; whereas on 29 March 1993 Yugoslavia requested the postponement of those sittings to a date in early May 1993, but the Court decided on 30 March 1993 that, in view of the urgency attaching under Article 74 of the Rules of Court to a request for provisional measures, it was unable to accede to that request;

8. Whereas on 31 March 1993, the Agent of Bosnia-Herzegovina filed in the Registry of the Court a document dated 8 June 1992 which in the contention of Bosnia-Herzegovina constituted a basis for the jurisdiction of the Court additional to that specified in the Application;

9. Whereas in written observations, submitted to the Court on 1 April 1993, on the request for the indication of provisional measures, the Government of Yugoslavia

"recommends that the Court, pursuant to Article 41 of its Statute and Article 73 of its Rules of Procedure, order the application of provisional measures, in particular:

- to instruct the authorities controlled by A. Izetbegovic to comply strictly with the latest agreement on a cease-fire in the 'Republic of Bosnia and Herzegovina' which went into force on 28 March 1993;

- to direct the authorities under the control of A. Izetbegovic to respect the Geneva Conventions for the Protection of Victims of War of 1949 and the 1977 Additional Protocols thereof, since the genocide of Serbs living in the 'Republic of Bosnia and Herzegovina' is being carried out by the commission of very serious war crimes which are in violation of the obligation not to infringe upon the essential human rights;

- to instruct the authorities loyal to A. Izetbegovic to close immediately and disband all prisons and detention camps in the 'Republic of Bosnia and Herzegovina' in which the Serbs are being detained because of their ethnic origin and subjected to acts of torture, thus presenting a real danger for their life and health;

- to direct the authorities controlled by A. Izetbegovic to allow, without delay, the Serb residents to leave safely Tuzla, Zenica, Sarajevo and other places in the 'Republic of Bosnia and Herzegovina', where they have been subject to harassment and physical and mental abuse, and having in mind that they may suffer the same fate as the Serbs in eastern Bosnia, which was the site of the killing and massacres of a few thousand Serb civilians;

- to instruct the authorities loyal to A. Izetbegovic to cease immediately any further destruction of Orthodox churches and places of worship and of other Serb cultural heritage, and to release and stop further mistreatment of all Orthodox priests being in prison;

- to direct the authorities under the control of A. Izetbegovic to put an end to all acts of discrimination based on nationality or religion and the practice of 'ethnic cleansing', including the discrimination relating to the delivery of humanitarian aid, against the Serb population in the 'Republic of Bosnia and Herzegovina'";

10. Having heard the oral observations on the request for provisional measures presented at public hearings held on 1 and 2 April 1993 by the following representatives:

on behalf of Bosnia-Herzegovina:

H.E. Mr. Muhamed Sacirbey and
Mr. Francis A. Boyle, *Agents*;

on behalf of Yugoslavia:

Mr. Ljubinko Zivkovic and
Mr. Shabtai Rosenne, *Acting Agents*;

and having received the replies of the Parties to a question put by a Member of the Court at the hearings;

11. Having regard to the "Supplementary Submission" on the facts alleged in support of the Application and the request transmitted to the Court on 1 April 1993 by facsimile by the Agent of Bosnia-Herzegovina;

* *

12. Whereas in the written observations referred to in paragraph 9 above, Yugoslavia made what it termed "a preliminary objection with regard to the legitimacy of the Applicant", claiming that neither the President of the Republic of Bosnia and Herzegovina, Mr. A. Izetbegovic, who appointed the Agents of that State and authorized the institution of the present proceedings, nor the Government of the Republic of Bosnia and Herzegovina, are legally elected; whereas Yugoslavia claims that the legitimacy and mandate of the Government and the President of the Republic of Bosnia and Herzegovina are disputed not only by representatives of the Serb people but also by representatives of the Croat people, and furthermore that the mandate of Mr. Izetbegovic expired on 20 December 1992, and was challenged on this ground by the Prime Minister of Bosnia-Herzegovina in a letter to the Chairman of the European Affairs Subcommittee of the United States Senate Foreign Relations Committee dated 24 February 1993, circulated, at the request of the Prime Minister of Bosnia-Herzegovina, by the Secretary-General of the United Nations as a document of the General Assembly and of the Security Council;

13. Whereas the Agent of Bosnia-Herzegovina stated that President Izetbegovic is recognized by the United Nations as the legitimate Head of State of the Republic of Bosnia and Herzegovina; whereas the Court has been seised of the case on the authority of a Head of State, treated as such in the United Nations; whereas the power of a Head of State to act on behalf of the State in its international relations is universally recognized, and reflected in, for example, Article 7, paragraph 2(a), of the Vienna Convention on the Law of Treaties; whereas accordingly the Court may, for the purposes of the present proceedings on a request for provisional measures, accept the seisin as the act of that State;

*

14. Whereas on a request for provisional measures the Court need not, before deciding whether or not to indicate them, finally satisfy itself that it has jurisdiction on the merits of the case, yet it ought not to indicate such measures unless the provisions invoked by the Applicant or found in the Statute appear, prima facie, to afford a basis on which the jurisdiction of the Court might be established; whereas this consideration embraces jurisdiction both *ratione personae* and *ratione materiae*, even though, inasmuch as almost all States are today parties to the Statute of the Court, it is in general only the latter which requires to be considered;

15. Whereas Article 35, paragraph 1, of the Statute of the Court provides that "The Court shall be open to the States parties to the present Statute", and Article 93, paragraph 1, of the United Nations Charter that "All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice"; and whereas it is maintained in the Application that "As Members of the United Nations Organization, the Republic of Bosnia and Herzegovina and Yugoslavia (Serbia and Montenegro) are parties to the Statute"; whereas however in the Application Bosnia-Herzegovina indicates that the "continuity" of Yugoslavia with the former Socialist Federal Republic of Yugoslavia, a Member of the United Nations, "has been vigorously contested by the entire international community, and [sic] including by the United Nations Security Council ... as well as by the General Assembly", and reference is there made to *(inter alia)* Security Council resolution 777 (1992) and General Assembly resolution 47/1;

16. Whereas Security Council resolution 777 (1992) of 19 September 1992 reads, so far as pertinent:

"The Security Council,

.....

Considering that the State formerly known as the Socialist Federal Republic of Yugoslavia has ceased to exist,

Recalling in particular resolution 757 (1992) which notes that 'the claim by the Federal Republic of Yugoslavia (Serbia and Montenegro) to continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations has not been generally accepted',

1. *Considers* that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations ; and therefore *recommends* to the General Assembly that it decide that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly;

..."

and whereas on 22 September 1992 the General Assembly adopted resolution 47/1, which reads, so far as pertinent:

"*The General Assembly,*

.....

Having received the recommendation of the Security Council of 19 September 1992 that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly,

1. *Considers* that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations; and therefore decides that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly";

17. Whereas the Under-Secretary-General and Legal Counsel of the United Nations addressed a letter on 29 September 1992 to the Permanent Representatives to the United Nations of Bosnia-Herzegovina and Croatia, in which he stated that the "considered view of the United Nations Secretariat regarding the political consequences of the adoption by the General Assembly of resolution 47/1" was as follows:

"While the General Assembly has stated unequivocally that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot automatically continue the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations and that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations, the only practical consequence that the resolution draws is that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not *participate* in the work of the General Assembly. It is clear, therefore, that representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) can no longer *participate* in the work of the General Assembly, its subsidiary organs, nor conferences and meetings convened by it.

> On the other hand, the resolution neither terminates nor suspends Yugoslavia's *membership* in the Organization. Consequently, the seat and nameplate remain as before, but in Assembly bodies representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot sit behind the sign "Yugoslavia". Yugoslav missions at United Nations Headquarters and offices may continue to function and may receive and circulate documents. At Headquarters, the Secretariat will continue to fly the flag of the old Yugoslavia as it is the last flag of Yugoslavia used by the Secretariat. The resolution does not take away the right of Yugoslavia to participate in the work of organs other than Assembly bodies. The admission to the United Nations of a new Yugoslavia under Article 4 of the Charter will terminate the situation created by resolution 47/1";

18. Whereas, while the solution adopted is not free from legal difficulties, the question whether or not Yugoslavia is a Member of the United Nations and as such a party to the Statute of the Court is one which the Court does not need to determine definitively at the present stage of the proceedings;

19. Whereas Article 35 of the Statute, after providing that the Court shall be open to the parties to the Statute, continues:

> "2. The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court";

whereas the Court therefore considers that proceedings may validly be instituted by a State against a State which is a party to such a special provision in a treaty in force, but is not party to the Statute, and independently of the conditions laid down by the Security Council in its resolution 9 of 1946 (cf. *S.S. "Wimbledon", P.C.I.J. 1923, Series A, No. 1*, p. 6); whereas a compromissory clause in a multilateral convention, such as Article IX of the Genocide Convention, relied on by Bosnia-Herzegovina in the present case could, in the view of the Court, be regarded prima facie as a special provision contained in a treaty in force; whereas accordingly if Bosnia-Herzegovina and Yugoslavia are both parties to the Genocide Convention, disputes to which Article IX applies are in any event prima facie within the jurisdiction *ratione personae* of the Court;

*

20. Whereas the Court must therefore now consider its jurisdiction *ratione materiae*; whereas Article IX of the Genocide Convention, upon which Bosnia-Herzegovina in its Application claims to found the jurisdiction of the Court, provides that

> "Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute";

21. Whereas the former Socialist Federal Republic of Yugoslavia signed the Genocide Convention on 11 December 1948, and deposited an instrument of ratification, without reservation, on 29 August 1950; whereas both Parties to the present case correspond to parts of the territory of the former Socialist Federal Republic of Yugoslavia;

22. Whereas at the time of the proclamation of the Federal Republic of Yugoslavia (that is to say the Respondent in the present proceedings) on 27 April 1992, a formal declaration was adopted on its behalf to the effect that

> "The Federal Republic of Yugoslavia, continuing the State, international legal and political personality of the Socialist Federal Republic of Yugoslavia, shall strictly abide by all the commitments that the Socialist Federal Republic of Yugoslavia assumed internationally";

and whereas this intention of Yugoslavia to honour the international treaties of the former Yugoslavia was confirmed in an official Note from the Permanent Mission of Yugoslavia to the United Nations, addressed to the Secretary-General, dated 27 April 1992;

23. Whereas Bosnia-Herzegovina on 29 December 1992 transmitted to the Secretary-General of the United Nations, the depositary of the Genocide Convention, a Notice of Succession in the following terms:

> "the Government of the Republic of Bosnia and Herzegovina, having considered the Convention on the Prevention and Punishment of the Crime of Genocide, of December 9, 1948, to which the former Socialist Federal Republic of Yugoslavia was a party, wishes to succeed to the same and undertakes faithfully to perform and carry out all the stipulations therein contained with effect from March 6, 1992, the date on which the Republic of Bosnia and Herzegovina became independent";

and whereas the Secretary-General on 18 March 1993 communicated the following Depositary Notification to the parties to the Genocide Convention:

> "On 29 December 1992, the notification of succession by the Government of Bosnia and Herzegovina to the above-mentioned Convention was deposited with the Secretary-General, with effect from 6 March 1992, the date on which Bosnia and Herzegovina assumed responsibility for its international relations";

24. Whereas Yugoslavia has disputed the validity and effect of the Notice of 29 December 1992, contending that no rule of general international law gives Bosnia-Herzegovina the right to proclaim unilaterally that it is now a party to the Genocide Convention merely because the former Socialist Federal Republic of Yugoslavia was a party to the Convention and the Convention was thus applicable to what is now the territory of Bosnia-Herzegovina, that the "declaration of succession" procedure provided for in the Vienna Convention on Succession of States in respect of Treaties (which Convention is not in force) was evolved for, and is applicable only in, cases of decolonization, and is therefore not open to Bosnia-Herzegovina; and that the Notice of 29 December 1992, if construed as an instrument of accession under Article XI of the Genocide Convention, can only "become effective on the ninetieth day following the deposit of the instrument" in accordance with Article XIII of the Convention; whereas Yugoslavia concludes that the Court has jurisdiction under the Genocide Convention, if at all, only in respect of facts subsequent to the expiration of 90 days from the Notice of 29 December 1992;

25. Whereas the Court observes that the Secretary-General has treated Bosnia-Herzegovina, not as acceding, but as succeeding to the Genocide Convention, and if this be so the question of the application of Articles XI and XIII of the Convention would not arise; whereas however the Court notes that even if Bosnia-Herzegovina were to be treated as having acceded to the Genocide Convention, with the result that the Application might be said to be premature when filed, "this circumstance would now be covered" by the fact that the 90-day period elapsed between the filing of the Application and the oral proceedings on the request (cf. *Mavrommatis Palestine Concessions, Judgment No. 2, P.C.I.J., Series A, No. 2*, p. 34); whereas the Court, in deciding whether to indicate provisional measures is concerned, not so much with the past as with the present and with the future; whereas, accordingly even if its jurisdiction suffers from the temporal limitation asserted by Yugoslavia - which it does not now have to decide - this is not necessarily a bar to the exercise of its powers under Article 41 of the Statute;

26. Whereas Article IX of the Genocide Convention, to which both Bosnia-Herzegovina and Yugoslavia are parties, thus appears to the Court to afford a basis on which the jurisdiction of the Court might be founded to the extent that the subject-matter of the dispute relates to "the interpretation, application or fulfilment" of the Convention, including disputes "relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III" of the Convention;

*

27. Whereas on 31 March 1993 the Agent of Bosnia-Herzegovina submitted, as constituting an additional basis of jurisdiction of the Court in this case, a letter, dated 8 June 1992, addressed to the President of the Arbitration Commission of the International Conference for Peace in Yugoslavia by Mr. Momir Bulatovic, President of the Republic of Montenegro, and Mr. Slobodan Milosevic, President of the Republic of Serbia; whereas the Court considers that the fact that this letter was not invoked in the Application as a basis of jurisdiction does not in itself constitute a bar to reliance being placed upon it in the further course of the proceedings (cf. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), I.C.J. Reports 1984*, pp. 426-427, para. 80);

28. Whereas the letter of 8 June 1992 referred to a letter which the President of the Arbitration Commission had on 3 June 1992 addressed to the Presidents of the Republics of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia and to the Presidency of the Federal Republic of Yugoslavia, requesting a statement of the position of their respective countries on three questions raised by the Chairman of the Conference for Peace in Yugoslavia; whereas the first question was whether the Federal Republic of Yugoslavia was a new State calling for recognition by the Member States of the European Community, the second question was whether the dissolution of the former Socialist Federal Republic of Yugoslavia could be regarded as complete, and the third was:

> "If this is the case, on what basis and by what means should the problems of the succession of States arising between the different States emerging from the Socialist Federal Republic of Yugoslavia be settled?"

29. Whereas in the joint letter of 8 June 1992, the President of Montenegro and the President of Serbia challenged the Commission's competence to give an opinion on the three questions submitted to it, and went on to say, in the English translation supplied by Bosnia-Herzegovina from the original Serbo-Croat:

"2. It is the principled position of FR Yugoslavia that all questions involved in the overall settlement of the Yugoslavian crisis should be resolved in an agreement between FR Yugoslavia and all the former Yugoslavian republics.

3. FR Yugoslavia holds the view that all legal disputes which cannot be settled by agreement between FR Yugoslavia and the former Yugoslav republics should be taken to the International Court of Justice, as the principal judicial organ of the United Nations.

Accordingly, and in view of the fact that all the issues raised in your letter are of a legal nature, FR Yugoslavia proposes that in the event that agreement is not reached among the participants in the Conference, these questions should be adjudicated by the International Court of Justice, in accordance with its Statute";

30. Whereas Bosnia-Herzegovina interprets this text as an offer by the Federal Republic of Yugoslavia to submit all outstanding legal disputes between itself and Bosnia-Herzegovina to the Court, and in reliance on this offer the Agent of Bosnia-Herzegovina at the hearings stated that Bosnia-Herzegovina

"hereby submits to the Court all of the legal disputes between it and ... Yugoslavia that have been set forth in our Application [and] Request for provisional measures",

and submitted

"that this formal expression of intention to submit to the jurisdiction of this Court by the appropriate authorities ... provides an additional jurisdiction for the Court to decide all the outstanding legal disputes between us";

and requested the Court "to consider this additional jurisdictional basis ... in support of [the] request for an indication of provisional measures";

31. Whereas however at the present stage of the proceedings, and on the basis of the information before the Court, it is by no means clear to the Court whether the letter of 8 June 1992 was intended as an "immediate commitment" by the two Presidents, binding on Yugoslavia, to accept unconditionally the unilateral submission to the Court of a wide range of legal disputes (cf. *Aegean Sea Continental Shelf, I.C.J. Reports 1978*, p. 44, para. 108); or whether it was intended as a commitment solely to submission to the Court of the three questions raised by the Chairman of the Committee; or as no more than the enunciation of a general policy of favouring judicial settlement, which did not embody an offer or commitment;

32. Whereas the Court is thus unable to regard the letter of 8 June 1992 as constituting a prima facie basis of jurisdiction in the present case and must proceed therefore on the basis only that it has prima facie jurisdiction, both *ratione personae* and *ratione materiae*, under Article IX of the Genocide Convention;

*

33. Whereas Yugoslavia has drawn attention to the numerous resolutions adopted by the United Nations Security Council concerning the situation in the former Yugoslavia, and to the fact that in that respect the Security Council has taken decisions on the basis of Article 25 of the Charter, and has indicated expressly that it is acting under Chapter VII of the Charter; whereas Yugoslavia contends that so long as the Security Council is acting in accordance with Article 25 and under that Chapter, "it would be premature and inappropriate for the Court to indicate provisional measures, and certainly provisional measures of the type which have been requested"; whereas the Court understands this objection as being primarily addressed to those measures requested by Bosnia-Herzegovina which go beyond matters within the scope of the Genocide Convention, and which for that reason the Court cannot consider; whereas however in any event, as the Court has observed in a previous case, while there is in the Charter

> "a provision for a clear demarcation of functions between the General Assembly and the Security Council, in respect of any dispute or situation, that the former should not make any recommendation with regard to that dispute or situation unless the Security Council so requires, there is no similar provision anywhere in the Charter with respect to the Security Council and the Court. The Council has functions of a political nature assigned to it, whereas the Court exercises purely judicial functions. Both organs can therefore perform their separate but complementary functions with respect to the same events" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 435, para. 95);

*

34. Whereas the power of the Court to indicate provisional measures under Article 41 of the Statute of the Court has as its object to preserve the respective rights of the parties pending the decision of the Court, and presupposes that irreparable prejudice shall not be caused to rights which are the subject of dispute in judicial proceedings; and whereas it follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by the Court to belong either to the Applicant or to the Respondent;

35. Whereas the Court, having established the existence of a basis on which its jurisdiction might be founded, ought not to indicate measures for the protection of any disputed rights other than those which might ultimately form the basis of a judgment in the exercise of that jurisdiction; whereas accordingly the Court will confine its examination of the measures requested, and of the grounds asserted for the request for such measures, to those which fall within the scope of the Genocide Convention;

* *

36. Whereas the legal rights sought to be protected by the indication of provisional measures are enumerated in the request of Bosnia-Herzegovina for the indication of such measures as follows:

"(*a*) the right of the citizens of Bosnia and Herzegovina physically to survive as a People and as a State;

(*b*) the rights of the People of Bosnia and Herzegovina to life, liberty, and security, as well as the other basic human rights specified in the 1948 Universal Declaration of Human Rights;

(*c*) the right of the People and State of Bosnia and Herzegovina to be free at all times from acts of genocide and other genocidal acts perpetrated upon them by Yugoslavia (Serbia and Montenegro), acting together with its agents and surrogates in Bosnia and elsewhere;

(*d*) the right of the People and State of Bosnia and Herzegovina to be free at all times from the use or threat of force against them by a foreign State acting in conjunction with its agents and surrogates on their sovereign territory and elsewhere;

(e) the right of Bosnia and Herzegovina to conduct its affairs and to determine matters within its domestic jurisdiction without interference or intervention by any foreign State acting directly or by means of agents and surrogates, or both;

(f) the right of self-determination of the People of Bosnia and Herzegovina;

(g) the basic right of sovereign existence for the People and State of Bosnia and Herzegovina";

37. Whereas Yugoslavia similarly seeks the protection of certain rights by the provisional measures recommended by it, set out in paragraph 9 above;

38. Whereas however, with respect to the measures requested both by Bosnia-Herzegovina and by Yugoslavia, the Court is, as observed above, confined to the consideration of such rights under the Genocide Convention as might form the subject-matter of a judgment of the Court in the exercise of its jurisdiction under Article IX of that Convention;

39. Whereas the definition of genocide in Article II of the Genocide Convention reads, so far as relevant:

"In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

...";

40. Whereas the Applicant has brought before the Court, in the Statement of Facts in its Application, and in the subsequent document entitled "Supplementary Submission", accounts of military and paramilitary activities, including the bombing and shelling of towns and villages, the destruction of houses and forced migration of

civilians, and of acts of violence, including execution, murder, torture, and rape which, in the circumstances in which they have occurred, show, in the view of the Applicant, that acts of genocide have been committed, and will continue to be committed against, in particular, the Muslim inhabitants of Bosnia-Herzegovina;

41. Whereas Bosnia-Herzegovina claims in the Application that the acts there complained of have been committed by former members of the Yugoslav People's Army (YPA) and by Serb military and paramilitary forces under the direction of, at the behest of, and with assistance from Yugoslavia, and that Yugoslavia is therefore fully responsible under international law for their activities; and whereas in its request for the indication of provisional measures Bosnia-Herzegovina similarly contends that the facts stated in the Application show that Yugoslavia is committing acts of genocide, both directly and by means of its agents and surrogates, and that there is no reason to believe that Yugoslavia will voluntarily desist from this course of conduct while the case is pending before the Court;

42. Whereas Yugoslavia observes that the situation is not one of aggression by one State against another, but a civil war, and asserts that it has no soldiers in the territory of Bosnia-Herzegovina, that it does not militarily support any side in the conflict, and that it does not support or abet in any way the commission of crimes cited in the Application; that Yugoslavia and its subordinate bodies, including the military, have not committed and are not committing any of the acts to which Article III of the Genocide Convention refers; and that the claims presented in the Application are without foundation; and whereas Yugoslavia has also argued that what Bosnia-Herzegovina is seeking is an interim judgment on the merits of the case, which is not covered by Article 41 of the Statute (cf. *Factory at Chorzów (Indemnities), Order of 21 November 1927, P.C.I.J., Series A, No. 12*, p. 10);

43. Whereas Yugoslavia in its written observations on the request for the indication of provisional measures "requests the Court to establish the responsibility of the authorities" of Bosnia-Herzegovina for acts of genocide against the Serb people in Bosnia-Herzegovina, and indicates its intention to submit evidence to that effect; and whereas Yugoslavia claimed at the hearings that genocide and genocidal acts are being carried out against Serbs living in Bosnia-Herzegovina; whereas Bosnia-Herzegovina for its part contends however that there is no basis in fact or in law for the indication of provisional measures against it, there being no credible evidence that its Government has committed acts of genocide against anyone;

44. Whereas the Court, in the context of the present proceedings on a request for provisional measures, has in accordance with Article 41 of the Statute to consider the circumstances drawn to its attention as requiring the indication of provisional measures, but cannot make definitive findings of fact or of imputability, and the

right of each Party to dispute the facts alleged against it, to challenge the attribution to it of responsibility for those facts, and to submit arguments in respect of the merits, must remain unaffected by the Court's decision;

45. Whereas Article I of the Genocide Convention provides that:

> "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish";

whereas all parties to the Convention have thus undertaken "to prevent and to punish" the crime of genocide; whereas in the view of the Court, in the circumstances brought to its attention and outlined above in which there is a grave risk of acts of genocide being committed, Yugoslavia and Bosnia-Herzegovina, whether or not any such acts in the past may be legally imputable to them, are under a clear obligation to do all in their power to prevent the commission of any such acts in the future;

46. Whereas the Court is not called upon, for the purpose of its decision on the present request for the indication of provisional measures, now to establish the existence of breaches of the Genocide Convention by either Party, but to determine whether the circumstances require the indication of provisional measures to be taken by the Parties for the protection of rights under the Genocide Convention; and whereas the Court is satisfied, taking into account the obligation imposed by Article I of the Genocide Convention, that the indication of measures is required for the protection of such rights; and whereas Article 75, paragraph 2, of the Rules of Court recognizes the power of the Court, when a request for provisional measures has been made, to indicate measures that are in whole or in part other than those requested, or that ought to be taken or complied with by the party which has itself made the request;

*

47. Whereas Bosnia-Herzegovina also invokes Article VIII of the Genocide Convention, which provides that

> "Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III",

and Bosnia-Herzegovina calls upon the Court to "act immediately and effectively to do whatever it can to prevent and suppress" the acts of genocide complained of or threatened; whereas the Court considers Article VIII, even assuming it to be applicable to the Court as one of the "competent organs of the United Nations", appears not to confer on it any functions or competence additional to those provided for in its Statute; whereas accordingly the Court at this stage of the proceedings is not required to do more than consider what provisional measures may be called for under Article 41 of the Statute;

*

48. Whereas in its request for the indication of provisional measures Bosnia-Herzegovina has also maintained that the Court should exercise its power to indicate provisional measures with a view to preventing the aggravation or extension of the dispute whenever it considers that circumstances so require; whereas from the information available to the Court it is satisfied that there is a grave risk of action being taken which may aggravate or extend the existing dispute over the prevention or punishment of the crime of genocide, or render it more difficult of solution;

* *

49. Whereas the crime of genocide "shocks the conscience of mankind, results in great losses to humanity ... and is contrary to moral law and to the spirit and aims of the United Nations", in the words of General Assembly resolution 96 (I) of 11 December 1946 on "the Crime of Genocide", which the Court recalled in its Advisory Opinion on *Reservations on the Convention on Genocide* (*I.C.J. Reports 1951*, p. 23);

* *

50. Whereas in the light of the several considerations set out above, the Court finds that the circumstances require it to indicate provisional measures, as provided by Article 41 of the Statute of the Court;

51. Whereas the decision given in the present proceedings in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case, or any questions relating to the admissibility of the Application, or relating to the merits themselves, and leaves unaffected the right of the Governments of Bosnia-Herzegovina and Yugoslavia to submit arguments in respect of those questions;

*

* *

52. For these reasons,

The COURT,

Indicates, pending its final decision in the proceedings instituted on 20 March 1993 by the Republic of Bosnia and Herzegovina against the Federal Republic of Yugoslavia (Serbia and Montenegro), the following provisional measures:

A. (1) Unanimously,

> The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should immediately, in pursuance of its undertaking in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent commission of the crime of genocide;

(2) By 13 votes to 1,

> The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should in particular ensure that any military, paramilitary or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence, do not commit any acts of genocide, of conspiracy to commit genocide, of direct and public incitement to commit genocide, or of complicity in genocide, whether directed against the Muslim population of Bosnia and Herzegovina or against any other national, ethnical, racial or religious group;

IN FAVOUR: *President* Sir Robert Jennings; *Vice-President* Oda; *Judges* Ago, Schwebel, Bedjaoui, Ni, Evensen, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ranjeva, Ajibola;

AGAINST: *Judge* Tarassov;

B. Unanimously,

The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Government of the Republic of Bosnia and Herzegovina should not take any action and should ensure that no action is taken which may aggravate or extend the existing dispute over the prevention or punishment of the crime of genocide, or render it more difficult of solution.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this eighth day of April, one thousand nine hundred and ninety-three, in four copies, one of which will be placed in the archives of the Court and the others transmitted respectively to the Government of the Republic of Bosnia and Herzegovina, the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), and to the Secretary-General of the United Nations for transmission to the Security Council.

(Signed) R. Y. JENNINGS,
President.

(Signed) Eduardo VALENCIA-OSPINA,
Registrar.

Judge Tarassov appends a declaration to the Order of the Court.

(Initialled) R. Y. J.

(Initialled) E. V. O.

Enclosure

DECLARATION OF JUDGE TARASSOV

The appalling atrocities which have taken place in the territory of the former State of Yugoslavia move me no less than they move my colleagues. Nevertheless I have not been able to join with them in voting for all the operative paragraphs of the Order, and I wish to say why.

I am generally in agreement with the considerands and conclusions of the Order, including its exclusion of the many elements of the request for provisional measures which go far beyond the limited jurisdiction of the Court under Article IX of the Genocide Convention. I support the provisional measures indicated by the Court in paragraph 52 A (1) and paragraph 52 B. I agree that the Government of the Federal Republic of Yugoslavia "should immediately ... take all measures within its power to prevent commission of the crime of genocide" - meaning, of course, measures within its real power. In my opinion, the same measures should be taken under the same understanding in respect of the Government of the Republic of Bosnia and Herzegovina, which has responsibility over acts committed on its territory. Unfortunately, the Court did not find it necessary to so provide. I agree that the Government of the Federal Republic of Yugoslavia and the Government of Bosnia and Herzegovina should not take any action and should ensure that no action is taken which may aggravate or extend the existing dispute over the prevention or punishment of genocide or render it more difficult of solution. Accordingly I have voted for these operative paragraphs of the Order.

However, I regret that I have not been able to vote for the provision of paragraph 52 A (2) that the Government of the Federal Republic of Yugoslavia should in particular "ensure" that any military, paramilitary or irregular armed units which "may" be directed or supported by it, and organizations or persons which "may be subject to its control, direction or influence" do not commit any acts of genocide, "of conspiracy to commit genocide", of incitement to genocide or of "complicity in genocide". In my view, these passages of the Order are open to the interpretation that the Court believes that the Government of the Federal Republic of Yugoslavia is indeed involved in such genocidal acts, or at least that it may very well be so involved. Thus, on my view, these provisions are very close to a pre-judgment of the merits, despite the Court's recognition that, in an Order indicating provisional measures, it is not entitled to reach determinations of fact or law. Moreover, these passages impose practically unlimited, ill-defined and vague requirements for the exercise of responsibility by the Respondent in fulfilment of the Order of the Court, and lay the Respondent open to unjustifiable blame for failing to comply with this interim measure. The lack of balance in these provisions is the clearer in view of the way in which the Court has singled out one element of the population of Bosnia and Herzegovina. The Applicant when referring to the measures that it sought (paragraph 3 of the Order) and the legal rights that it sought to have protected (paragraph 36 of the Order) did not specify a particular group for protection, but rather and quite properly used such terms as "the citizens" or "the People" of Bosnia and Herzegovina.

Moreover, these objectionable provisions lack not only balance but practicality. Is it really within the realm of the practical for the Yugoslav Government to "ensure" that all persons who may claim to be subject to its influence do not conspire to commit genocide or incite genocide? Particularly when the persons who are accused of such acts are not its citizens and not within its territorial jurisdiction? Someone may affirm that he is under the influence of the Yugoslav Government without that being the fact. I am convinced that the Court should not imply that the Yugoslav Government may have responsibility for the commission of acts which in fact may be beyond its control.

(Signed) Nikolai K. TARASSOV.